

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: New Business

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TITLE: DISCUSSION OF NEW ANTENNA REGULATIONS

Proposal: Presentation of the impact on existing, residential satellite dishes resulting from the wireless communication facilities regulations adopted May 20, 2003.

Location: N/A

APN: N/A

RECOMMENDATION: N/A

Applicant: None

Property Owner: None

Previous Action(s): N/A

General Plan Designation: N/A

Present Zoning: N/A

Existing Land Use: N/A

Agenda Sent To: N/A

Attachments: Wireless communication facilities regulations adopted May 20, 2003

BACKGROUND

At the August 13, 2003 Planning Commission meeting, the Commission requested staff make a presentation to the Commission discussing the wireless communication facilities regulations adopted into the City of Milpitas Zoning Ordinance on May 20, 2003. Specifically, the Commission requested that the presentation explain the impact the new regulations have on existing, residential satellite dishes.

The relevant regulations recommended for approval by the Planning Commission and adopted by the City Council on May 20, 2003 are attached. The following new definitions apply to the topic of residential satellite dishes: "antenna" (found in Section 2.07-3), "noncommercial wireless communication facility" (found in Section 2.58-5.2) and "satellite dish antenna/satellite antenna" (found in Section 2.68-1). New Section 57.02-15.1.A applies to this topic as it specifies under what circumstances a residential satellite dish is exempt from obtaining a use permit. This section also references Section 54.09 that sets forth the height, attachment, setback and location standards for satellite dishes that must be met in order to be exempt from obtaining a use permit.

ANALYSIS

In general, residential satellite dishes legally existing prior to the effective date of the new regulations (30 days from May 20, 2003) are exempt (grandfathered) from the new regulations. To be considered “legally existing” depends on two factors – whether the satellite dish meets the zoning regulations that were in effect prior to the new regulations and whether a building permit, if necessary, was obtained for the installation of the satellite dish.

Prior to the new regulations, a residential satellite dish was classified as an accessory structure. Accessory structures were (and most still are) restricted to the side or rear yard and not permitted to be located closer than three feet to any side or rear property line. A building permit is required for freestanding satellite dishes greater than six feet in height and for any satellite dish that when combined with the height of the structure to which it is attached, is greater than six feet in height.

If an existing residential satellite dish cannot be considered “legally existing” due to the zoning and building permit factors above, it is in violation and would be required to be removed if cited by city code enforcement staff unless it could be brought into compliance with the new regulations. The new regulations require a use permit for those residential satellite dishes that are greater than one meter in diameter. For residential satellite dishes one meter or less in diameter, a use permit is not required if a building permit is obtained (if required) and the satellite dish meets all the requirements set forth in Section 54.09-16.

Section 54.09-16 requires the following:

54.09-16 a) and h) The dish height is limited to a maximum of 25 feet above the maximum height permitted in the zoning district in the which the satellite is located. A higher height is allowed if the dish is attached to a tower or mast that is of a collapsible design and the collapsed height of the tallest point does not exceed 25 feet above the maximum district height. However, these structures must be in the collapsed position when the antenna is not in use.

54.09-16 b) If the satellite dish is not mounted on a foundation on the ground, it must be attached to the main structure (the house) or to a tower/mast attached to a foundation.

54.09-16 c) The design of the satellite dish attachment must meet the Building Code-required wind loading specifications.

54.09-16 d) and e) The satellite dish shall not be closer than 3 feet to a property line and in no case shall it encroach into a utility easement. The satellite dish antenna support structure shall not be closer than 10 feet from a property line.

54.09-16 f) If not attached to the house, the satellite dish nor its support structure shall be located between a public right-of-way and the house (so as not to be visible from a public street or accessway).

54.09-16 g) There is no limit on the number of satellite dishes permitted on a residential lot unless the dishes and associated support structures exceed 20 feet in height, in which case there is a limit of two such structures.

54.09-16 i) The satellite dish nor any tower or mast associated with it shall be painted. Colors are limited to grey, black, white, brown, tan, silver, gold, pale blue, dark green or any other color compatible with surrounding structures or vegetation.

If any of the above requirements from Section 54.09-16 cannot be met, the homeowner/applicant can apply for a use permit in an attempt to legalize the nonconforming satellite dish.

RECOMMENDATION

No recommendation is needed for this agenda item since it is a presentation for informational purposes.

ANTENNA REGULATIONS

Ordinance No. 38.761 (adopted May 20, 2003)

Added Definitions for:

2.07-1 Amateur Radio Facility

A wireless communication facility operated by an FCC licensed amateur radio operator within the Amateur Radio Service (USC Title 47, Part 97).

2.07-2 Amateur Radio Operator

A person holding written authorization to be the control operator of an Amateur Radio facility. This authorization may be in the form of a license or permit issued by the Federal Communications Commission or a foreign national or multi-national license or permit recognized by treaty as valid in the United States.

2.07-3 Antenna

Any system of towers, poles, panels, rods, wires, drums, reflecting discs or similar devices used for the transmission or reception of electromagnetic waves. See also "Satellite dish or satellite antenna".

2.26-1.2 Commercial Wireless Communication Facility

A wireless communication facility operated by a for-profit business or for-profit purposes. See by contrast, "Noncommercial wireless communication facility".

2.58-5.2 Noncommercial Wireless Communication Facility

A wireless communication facility operated by a government agency, a nonprofit organization, a for-profit business for non-profit purposes or a private citizen for personal use. It includes all amateur radio facilities. See by contrast, "Commercial wireless communication facility".

2.62-1 Parcel

A "parcel" shall mean a legal lot of record.

2.67 (a) Public Right-of-Way

As defined in Chapter V-500-1.3 of the Milpitas Municipal Code, "public right-of-way" shall mean the full width of the right-of-way of any street, as defined in the California Vehicle code used by the general public, whether or not such street has been accepted as and declared to be part of the City system of streets, including streets forming a part of the State Highway System. "Public right-of-way" also includes easements where the City is the grantee of the easement and property owned by the City of Milpitas or the Milpitas Redevelopment Agency and any public park, trail, or right-of-way within the City of Milpitas.

2.68-1 Satellite Dish Antenna or Satellite Antenna

Any device incorporating a reflective surface that is solid, open mesh or bar configured to form a shallow dish, cone, horn or cornucopia used to transmit and/or receive electromagnetic signals. This definition includes antennas that are sometimes called "SES", "TVRO", "TVBS", and "DBS".

2.78-4 Wireless Communication Facility

The equipment and associated structures needed to transmit and/or receive electromagnetic signals. A wireless communication facility typically includes antennas, supporting structures (including, but not limited to, monopoles, utility structures, buildings and accessory structures), enclosures and/or cabinets housing associated equipment, cable, access roads and other accessory development.

Provided the following regulations for antennas that do not need a Conditional Use Permit:

54.09-16 Accessory Buildings and Structures

Wireless Communication Facilities exempt from obtaining a conditional use permit as per Section 57.02-15.1:

- a) No vertical structure associated with an Antenna (hereinafter "Tower or Mast") shall exceed the maximum height of a structure permitted in the zoning district in which the structure is located by more than twenty-five (25) feet (hereinafter "Maximum Height") except as provided in this Section. The Maximum Height shall be measured to the highest point of the Tower or Mast or Antenna(s) mounted thereon.
- b) All Towers or Masts must be attached to the main structure or to a foundation. In any event, the design of the attachment must meet or exceed the Tower or Mast manufacturer's recommended design for such structural attachment or foundation. Guy wires may only be used as a means of support for Towers or Masts only if such Tower or Mast does not exceed 20 feet in height. Wire antennas suspended from Towers or Masts shall not be considered guy wires. Such manufacturer's recommended design shall be submitted with the building permit application and shall form the basis for permitting and subsequent inspection.
- c) The sum of equivalent flat plate wind load(s) in square feet of all equipment needed for the communication facility to function and that are mounted on the Tower or Mast shall not exceed 100% of the Tower or Mast manufacturer's maximum wind loading specification for a minimum 70 mph wind if located on the valley floor and 80 mph wind if located within the hillside area.
- d) No part of any Antenna mounted on a Tower or Mast may extend closer than 3 feet to a property line whether fixed or movable, or forward of the front of the building. However, in no case shall any such antenna encroach into a utility easement within which overhead power lines are located. If such antenna serves a multi-family unit that is within a multi-family

building where the unit does not adjoin a side or rear yard of the building, such antenna attached to the unit or attached to a structure attached to the unit may extend forward of the front of the building by no more than 3 feet. However, in no case shall any such encroachment forward of the front of the building extend into a public right-of-way or private accessway.

- e). All Towers and Masts attached to a foundation must be located within the side or rear yard and no closer than 10 feet from a property line. However, in no case shall a Tower and/or Mast encroach into a utility easement.
- f). Receive-only radio and television antennas, citizens band facilities and data communications facilities and satellite dishes one meter or less in diameter in residential zones, or two meters or less in diameter in commercial and industrial zones shall not be installed between a public right-of-way and a structure. Any of the aforementioned wireless communication facilities that are preempted by federal law that are proposed to be located in the area between a public right-of-way and a structure, shall be allowed without a use permit if such facility is attached to said structure and if such location provides the only unobstructed view required for the facility to function.
- g). There shall be no more than two antenna support structures that exceed 20 feet in height per parcel.
- h). A Tower or Mast may exceed the Maximum Height referenced in subsection a) above only by an extendable Tower or Mast provided that (a) the collapsed height of the Tower or Mast and Antenna(s) does not exceed the Maximum Height and (b) the extendable Tower or Mast shall be permitted to exceed the Maximum Height only during communications operations and shall be lowered to the Maximum Height upon termination of each operating session.
- i). Masts, Towers and Antennas shall not be painted and shall be limited to grey, black, white, brown, tan, silver, gold, pale blue, dark green or any other color compatible with surrounding structures or vegetation.
- j). If an Antenna, Tower or Mast is no longer used for its intended purpose, it shall be removed.
- k). All operations of Tower or Mast mounted Antenna(s) must meet applicable FAA and FCC rules and regulations and any emissions must meet applicable FCC and ANSI radiation safety guidelines.

Provided the following regulations for antennas that require a Conditional Use Permit:

Section 57 – Conditional Uses Permitted by the Commission

57.02-15.1 Additional Uses Permitted
Wireless Communication Facility.

It is the purpose to regulate the placement and design of antennas and wireless communication facilities. The installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to buildings and open areas, by blocking and degrading views, and by creating visual clutter. Therefore, conditional use permit review and the standards that follow are intended to protect and promote public health, safety, community welfare and the aesthetic quality of life by encouraging the orderly development of wireless communication facilities. In addition, they are intended to regulate the placement of certain antennas due to their size and commensurate visual and aesthetic impact in order to promote public safety and protect the aesthetic quality of the community. The standards that follow are the minimum necessary to obtain the community objectives of promoting public health, safety and aesthetics while providing for reasonable signal access.

Any facilities exempt from local regulation as per FCC regulations and the following non-commercial wireless communication facilities shall be exempt from obtaining a conditional use permit and shall be permitted provided that the following standards are met:

- A. Receive-only radio and television antennas, including satellite dishes one meter or less in diameter in residential zones or on residential buildings, or two meters or less in diameter in commercial and industrial zones, provided that:
 - 1. The antenna meets all lot coverage, height, setback and other requirements on accessory structures as per Section 54.09; and
 - 2. All required building permits are obtained.
- B. Amateur radio facilities, provided that all antennas and supporting structures meet the following requirements:
 - 1. All fixed radio equipment, antennas and antenna support structures shall comply with all lot coverage, height, setback and requirements on accessory structures as per Section 54.09; and
 - 2. All required building permits shall be obtained.
- C. Temporary wireless communication facilities providing public information coverage of a news event. Mobile facilities providing public information coverage of news events may be set up on public or private property for a duration of seventy-two (72) hours or less.

Deleted all references to Telecommunication Antenna Facility